In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

The issue upon which certiorari is sought (Pet. 2) is whether an employer violates its bargaining obligation under the National Labor Relations Act when it declines to furnish the union [1] with the names and home addresses of its employees where it is alleged (1) that alternative methods of communication with employees exist (2) that the employer had a good faith doubt of the union's representative status when the request was made and (3) there was a past history

[1] Here, Lodges 1746, 1746A, 700, and 743, affiliated with District 91 of the International Association of Machinists and Aerospace Workers, AFL–CIO.

of union violence at the homes of nonstriking employees. These factual assertions are, however, refuted by the record.

The Board found (Pet. App. 19a–20a) that because of the inadequacy of other available methods, singly or in combination, direct mailing to the homes of the employees was the only sufficient method the Union could employ to reach the member as well as nonmember employees (Pet. App. 43a–50a); that while the Company may have had reasonable grounds to doubt the Union's majority status in 1966, and signed contracts with it in March 1966 under the compulsion of a district court order, the compulsion had dissipated at the time the Company had entered into the 1968 and 1969 contracts, which it did without raising any objection to the Union's showing of majority status (Pet. App. 50a–56a); and that violence which had occurred at the homes of nonstriking employees in 1960 could not justify the Company's instant refusal to furnish the information, since there was no evidence of any present threat by the Union or of any of its agents to engage in any similar misconduct (Pet. App. 61a).

After an extensive review, the court of appeals (Pet. App. 2a–18a) enforced the Board's order, determining that each of these findings was supported by substantial evidence in the record. Under familiar principles, further review by this Court of the correctness of these factual conclusions is not warranted. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 490–491.[2]

[2] It is settled that the duty to bargain imposed by the National Labor Relations Act requires the employer to furnish the em-

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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FEBRUARY 1971.

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ployees' bargaining representative with information that is necessary to the proper performance of the latter's duties. See, *National Labor Relations Board* v. *Acme Industrial Co.*, 385 U.S. 432, 435–436. A list of the employees names and addresses may in appropriate circumstances—as here—constitute such necessary information. *Prudential Insurance Co. of America* v. *National Labor Relations Board*, 412 F. 2d 77 (C.A. 2), certiorari denied, 396 U.S. 928; *Standard Oil Co. of California, W. O., Inc.* v. *National Labor Relations Board*, 399 F. 2d 639 (C.A. 9). There is no merit to petitioner's contention (Pet. 13) that the court of appeals applied a "*per se* rule" in reaching that conclusion in this case. On the contrary, the court concluded that the holdings in *Prudential* and *Standard Oil* were applicable only after careful analysis of these decisions, finding specifically that the facts in this case were "very similar to those" in *Standard Oil* (see Pet. App. 13a, n. 2; Pet. App. 17a–18a).

U.S. GOVERNMENT PRINTING OFFICE: 1971